

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON, et al.,

PLAINTIFFS,

v.

U.S. DEPARTMENT OF
TRANSPORTATION et al.,

DEFENDANTS.

NO. 2:25-cv-00848

DECLARATION OF DEBRA A.
NELSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

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ATTORNEY GENERAL OF WASHINGTON
Environmental Protection Division
800 Fifth Avenue STE 2000
Seattle, WA 98104
206-464-7744

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2 I, Debra Nelson, declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that
3 the foregoing is true and correct:
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5 1. I am a resident of the State of New York, I am over the age of 18 and have
6 personal knowledge of all the facts stated herein, except to those matters stated upon
7 information and belief; as to those matters, I believe them to be true. If called as a witness, I
8 could and would testify competently to the matters set forth below.

9 2. I am currently employed by the New York State Department of Transportation
10 (NYSDOT) as Director of the Office of Policy, Planning and Performance.

11 3. As Director of the Office of Policy, Planning and Performance, I am responsible
12 for coordinating NYSDOT implementation of formula funds for electric vehicle charging
13 stations made available to States under the National Electric Vehicle Infrastructure (“NEVI”)
14 Formula Program Infrastructure Investment and Jobs Act (Public Law 117-58) (hereinafter
15 “The IIJA”)
16

17 4. Under the IIJA, New Yorks was apportioned approximately \$175.4 million over
18 Federal Fiscal years 2022 thru 2026 to strategically deploy and develop electric vehicle
19 charging infrastructure in the State of New York to support the establishment of a national
20 electric vehicle charging network.
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22 5. NYSDOT relied and acted upon the FHWA’s statutory obligation to provide
23 NEVI formula funding consistent with the IIJA’s requirements. NYSDOT entered into
24 agreements with the Power Authority of New York (NYPA) and the New York Energy
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1 Research and Development Authority (NYSERDA) to assist with electric vehicle charging
2 development leveraging such state authorities' expertise and resources.

3 6. In September of 2023, NYSDOT entered into an agreement for Power Authority
4 of New York to administer a portion of the NEVI Formula Program that had already been
5 approved by FHWA to NYSDOT, pursuant to the IIJA. This included \$16,100,000 for 23
6 initial Direct Current Fast Charging (DCFC) stations targeting the largest gaps along New
7 Yorks' designated and FHWA-approved Alternative Fuel Corridors. Eleven stations are
8 operational and the remaining 12 stations are in development.

10 7. In July 2024, NYSERDA and NYSDOT entered into an agreement for
11 NYSERDA to administer a portion of the NEVI Formula Program that had already been
12 approved by FHWA to NYSDOT, pursuant to the IIJA. This included \$23,658,800 for Direct
13 Current Fast Charging (DCFC) stations and \$1,178,200 for workforce development activities.
14 A later amendment to the agreement, executed in December 2024, added \$31,350,000 for
15 additional DCFC stations. The agreement directed NYSERDA to select DCFC station projects
16 through competitive solicitations.

18 8. New York has a rapidly growing population of EV drivers. The number of EVs
19 registered in New York State has risen by 440 percent (from about 52,000 in July 2020 to
20 about 281,000 in March 2025), while the number of DCFC charging ports has increased by
21 only 290 percent (from about 560 to about 2,180). Failing to make available the funds to
22 support increased DCFC availability at a similar pace undermines the consumer choice to
23 purchase an EV, and may cause loss of use of the purchased vehicle.

1 9. As a State Transportation agency, NYSDOT's mission is "to provide a safe,
2 reliable, equitable, and resilient transportation system that connects communities, enhances
3 quality of life, protects the environment, and supports the economic well-being of New York
4 State." Development of EV charging stations along New Yorks busiest transportation
5 corridors to ensure access to state and interstate highways for EV drivers, via a safety-net of
6 reliable, accessible, and publicly available charging stations not more than 50 miles apart, falls
7 squarely within NYSDOT's transportation mission, and the intent of IIJA's enactment,
8 including but not limited to Division J, Title VIII paragraph 2 (H.R. 3684-995)
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10 10. Like many states, New York expected the NEVI Formula Program established
11 in the IIJA to play a critical role in the State's ability to transition to electrification of vehicles.
12 See IIJA, Pub. L. No. 117-58, 135 Stat. 429 (2021).
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14 11. The IIJA allocated \$5 billion over federal fiscal years 2022 - 2026 for the NEVI
15 Formula Program to fund strategic deployment of electric vehicle ("EV") charging
16 infrastructure. The Federal Highway Administration ("FHWA") administers the NEVI
17 program. Each state is required to submit a State Electric Vehicle Infrastructure Deployment
18 Plan ("State Plan") for each fiscal year describing how the state intends to use the NEVI funds.
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20 12. The IIJA further requires the Secretary of Transportation, within ninety (90)
21 days of the statute's enactment and in coordination with the Secretary of Energy, to develop
22 "guidance for States and localities to strategically deploy electric vehicle charging
23 infrastructure" consistent with the NEVI Formula Program provisions of the IIJA ("NEVI
24 Formula Program Guidance"). FHWA issued NEVI Formula Program Guidance on February
25 10, 2022, and has updated the guidance annually.
26

1 13. New York prepared and provided to the FHWA its State Plans for fiscal years
2 2022-2025 describing how it intended to use its share of funds to carry out the NEVI Formula
3 Program.

4 14. Under the IIJA, New York was apportioned \$25,971,644 in Fiscal Year (FY)
5 2022, \$37,373,438 in FY 2023, \$37,373,747 in FY 2024, \$37,373,779 in FY 2025, and
6 \$37,373,779 in FY 2026. In total such appropriations equal \$175,466,514.

7 15. The FHWA approved New York's State Plans in letters dated September 27,
8 2022, October 4, 2024, and November 13, 2025 ("State Plan Approvals"). Each letter explicitly
9 stated that "[w]ith this approval, Fiscal Year . . . funds are now available to New York for
10 obligation."

11 16. In accordance with such State Plan Approvals, NYSDOT has obligated
12 approximately \$17.7 million (consisting primarily of the above mentioned September 2023
13 project with NYPA for \$16,100,000, and the July 2024 workforce development project with
14 NYSERDA for \$1,1780,00).

15 17. On January 20, 2025, President Trump issued an Executive Order ("EO")
16 entitled Unleashing American Energy. Section 7(a) of the EO directs all agencies to
17 "immediately pause disbursement of funds appropriated through" the IIJA, "including but not
18 limited to funds for electric vehicles charging stations made available through the [NEVI]
19 Program."
20 Program."

21 18. On February 6, 2025, New York received a letter from Emily Biondi, the
22 Associate Administrator for the Office of Planning, Environment and Realty in the FHWA,
23 24 25 26

1 with the subject "Suspending Approval of State Electric Vehicle Infrastructure Deployment
2 Plans."

3 19. The February 6 letter informed State Transportation Directors that the new
4 leadership of DOT "has decided to review the policies underlying the implementation of the
5 NEVI Formula Program" and was therefore rescinding NEVI Formula Program Guidance.
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7 20. The February 6 letter further claimed that FHWA "aims to have an updated
8 draft NEVI Formal Program Guidance published for public comment in the spring" and that
9 the Agency "will publish updated final NEVI Formula Guidance that responds to comments
10 received" after the public comment period has closed.

11 21. Finally, the FHWA informed NYSDOT that FHWA would be "immediately
12 suspending the approval of all State Electric Vehicle Infrastructure Deployment plans for all
13 fiscal years" and prohibiting future obligations "under the NEVI Formula Program until the
14 updated final NEVI Formula Program Guidance is issued and new State plans are submitted
15 and approved."
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17 22. The February 6 letter therefore made clear that New York would not have
18 access to New York's estimated remaining balance eligible for obligation of approximately
19 \$120,000,000 which had been made available to New York through its State Plan Approvals.
20 FHWA has further given NYSDOT no sense of how it can apply for the remaining
21 \$37,373,779 which NYSDOT expected to receive for FY 2026.
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23 23. NYSDOT relied and acted upon the FHWA's statutory obligation to provide
24 NEVI formula funding consistent with the IIJA's requirements. As described in Paragraph 6
25 and 7 above, New York is poised to move forward on over \$50,000,000 in DCFC station
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1 projects along New York's highway corridors. However, New York is currently precluded
2 from obligating funds to do so and all future uses of NEVI Formula Program funding are now
3 on hold indefinitely.
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6 I declare under penalty of perjury under the laws of the United States that, to the best of
7 my knowledge, the foregoing is true and correct.

8 DATED this 2nd day of May 2025, at Albany, New York.
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12 Debra A. Nelson
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